VILLAGE AND CITY COUNCIL OF ALEKNAGIK
MAY M. OLSON
LAWRENCE MURPHY, SR.
(ON RECONSIDERATION)

IBLA 83-821 Decided April 30, 1984

Reconsideration of the Board's decision Village & City Council of Aleknagik, May M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (1983).

Village & City Council of Aleknagik, May M. Olson, Lawrence Murphy, Sr., 77 IBLA 130 (1983), modified in part; decision of Bureau of Land Management affirmed.

1. Alaska: Native Allotments

   Where a Native allotment application was approved after a Government contest and prior to the passage of sec. 905 of ANILCA, which legislatively approved pending allotment applications, sec. 905's 180-day protest rights providing for a hearing do not apply to this already adjudicated and approved application.

2. Administrative Procedure: Hearings--Constitutional Law: Due Process

   Where one serving as the mayor of a city and village corporation president receives actual notice of and participates in a Native allotment contest proceeding in which the city and village assert an interest, there is no denial of due process as to appellant city and village.

APPEARANCES: Randall Simpson, Esq., Anchorage, Alaska, for appellant; John M. Allen, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management; David C. Fleurant, Esq., Anchorage, Alaska, for the heirs of Peter Krause, Sr.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Village and City Council of Aleknagik has petitioned for reconsideration of the Board's decision styled Village & City Council of Aleknagik,

77 IBLA 130 (1983), which included a dismissal of this appellant for an apparent failure to file a statement of reasons in support of the appeal. 1/ Appellant enclosed with the petition a copy of the statement of reasons, which bears an affidavit of mailing dated July 27, 1983, showing service on all parties. Further, it was confirmed that the Regional Solicitor's Office received a copy of the statement of reasons on July 29, 1983. Since appellant has established that the statement of reasons was timely filed, we modify our earlier decision dismissing the appeal of the Village and City Council of Aleknagik and proceed to address the merits of this appeal.

Appellant asserts that pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1634(5)(C) (1982), 2/ a Native allotment applicant is not entitled to land described in the allotment application "where * * * said land is the situs of improvements claimed by the entity." Under 43 U.S.C. § 1634 appellant further asserts that the city of Aleknagik has prescriptive rights to the streets and rights-of-way contained in the Peter Krause Native allotment application. Finally, appellant asserts it received no formal notice of the hearing contest which determined Peter Krause's Native allotment claim and therefore, the resulting decision issued on March 28, 1980, by Administrative Law Judge E. Kendall Clarke is not binding on it.

[1] The thrust of section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634 (Supp. V 1981), is to legislatively approve pending Native allotment applications and to provide 180 days for specified protests, in which case the application must be adjudicated. The Native allotment application filed by Peter Krause, however, had already been adjudicated and approved prior to the passage of ANILCA. The legislative history of ANILCA reflects that the intent of section 905 is to provide an expedited legislative conveyance procedure and promote allotment finality under ANCSA, 43 U.S.C. § 1601 (1982). See S. Rep. No. 413, 96th Cong., 2d Sess. 237 (1980). This report explained that the Department was requiring the time-consuming and expensive process of field examination and adjudication on a parcel-by-parcel basis of all timely allotment applications. Thus, Congress enacted section 905 providing for the prompt resolution of pending allotment applications to resolve Alaska's uncertain land ownership status caused by the tedious parcel-by-parcel adjudications. This Board can only conclude that Congress did not intend the 180-day protest rights providing for a hearing in section 905 to apply to an already adjudicated and approved allotment application. See Mary Olympic (On Reconsideration), 65 IBLA 26 (1982), appeal filed, Civ. No. A 82-396 (D. Alaska Oct. 8, 1982). Consequently, appellant had 30 days after Judge Clarke's decision in 1980 to protest and appeal the decision. BLM's decision dismissing appellant's protests under section 905 of ANILCA was correct.

[2] Appellant also asserts, however, that due process requires a rehearing in this matter. Appellant claims a property interest in the land awarded to the heirs of Peter Krause and asserts that there was no notice

---

1/ The other appellants in the prior decision, May M. Olson, and Lawrence Murphy, Sr., did not petition for reconsideration. Thus the prior decision is final as to all issues decided involving Olson and Murphy.
2/ 43 U.S.C. § 1634 (1982) was actually passed as a part of the Alaska National Interest Lands Conservation Act (ANILCA) in 1980.

provided nor opportunity given for appellant to participate in the Krause hearing. Whether appellant's contingent property rights in the subject land were sufficient to require the due process it is asserting need not be decided, however, because notice and an opportunity to participate in the Krause hearing were afforded appellant. 3/

Peter Krause filed his Native allotment application prior to the filing of the townsite application by appellant. This Board has found that the right to a Native allotment vests upon the completion of 5 years' use or occupancy of the land and the filing of an application for the allotment. United States v. Flynn, 53 IBLA 208, 88 I.D. 373 (1981). The Native Allotment Act provided that "no allotment shall be made to any person * * * until said person has made proof satisfactory to the Secretary of the Interior of substantially continuous use and occupancy of the land for a period of five years." 43 U.S.C. § 270-3 (1982). Departmental regulation 43 CFR 2561.0-5(a) defines the phrase "substantially continuous use and occupancy" as follows:

> The term "substantially continuous use and occupancy" contemplates the customary seasonality of use and occupancy by the applicant of any land used by him for his livelihood and well-being and that of his family. Such use and occupancy must be substantial actual possession and use of the land, at least potentially exclusive of others, and not merely intermittent use.

This Board has also determined that potential exclusivity, or independent use, with the exception of a head of a household who used the land with his or her family, is key to an allotment grant. See Andrew Petla, 43 IBLA 186, 198-201 (1979).

BLM contested Krause's Native allotment application primarily challenging the exclusivity of Krause's use of the land by asserting that part of the land was communally used. The Regional Solictor's Office presented witnesses in an effort to substantiate BLM's contest. Among the witnesses presented by the Government was Wassiley Ilutsik, whose presence confirms that he had actual notice of the hearing. Ilutsik identified himself at the hearing as the mayor of the city of Aleknagik and the village corporation president (Tr. 61). He further testified that he had been a village leader on the village council for over 15 years (Tr. 76-77) and that as a village councilman he was one of the original petitioners for the townsite (Tr. 80).

The United States Supreme Court in Alexandria v. Fairfax, 95 U.S. 774 (1877), discussed the concept that every corporation has officers who speak and act for it by authority of law, and suggested that one way to determine the proper person or persons on whom notice should be served to bind the corporation in a judicial proceeding is to examine the nature of the functions performed by the individual(s). The Court then stated that under the circumstances, such notice, in the case of a town or a city, may be made on the mayor, or, in his absence, on the president of the council or, if both be

---

3/ See Appeal of State of Alaska, 3 ANCAB 196, 86 I.D. 225 (1979), for a general discussion of "property interest" as to standing in Native allotment cases. See also Stratman v. Watt, 656 F.2d 1321 (1981).

absent, on an alderman. Under the circumstances of the subject case, we believe that the notice provided to Ilutsik, the city mayor and village corporation president, was sufficient notice to appellant of the administrative hearing. The knowledge possessed by the mayor may be imparted to the city. See 3 Am. Jur. 2d Agency § 273. Further, Ilutsik's participation in the hearing providing testimony on the exclusive or communal use of the subject land gave appellant, through its agent, an opportunity to make as comprehensive and detailed a presentation as it chose to do. Additionally, Ilutsik, on behalf of appellant, or appellant could have filed a Motion to Intervene during the hearing. Consequently, this Board rejects appellant's contention that due process requires a rehearing in this matter.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge